

under the Code may be applied separately with respect to the employees of each qualified separate line of business. These requirements are limited to the minimum coverage requirements of section 410(b) (including the non-discrimination requirements of section 401(a)(4)), the minimum participation requirements of section 401(a)(26), and the 55-percent average benefits test of section 129(d)(8). This section provides the exclusive rules for determining whether an employer is treated as operating qualified separate lines of business under section 414(r), as well as rules for applying the requirements of sections 410(b), 401(a)(26), and 129(d)(8) separately with respect to the employees of a qualified separate line of business.

(b) *Conditions under which an employer is treated as operating qualified separate lines of business*—(1) *In general.* An employer is treated as operating qualified separate lines of business under section 414(r) only if all property and services provided by the employer to its customers are provided exclusively by qualified separate lines of business. Thus, once an employer has determined its qualified separate lines of business under paragraph (b)(2) of this section, no portion of the employer may remain that is not included in a qualified separate line of business. In addition, once the employer has determined the employees of its qualified separate lines of business under paragraph (b)(3) of this section, every employee must be treated as an employee of a qualified separate line of business, and no employee may be treated as an employee of more than one qualified separate line of business.

(2) *Qualified separate line of business*—(i) *In general.* A qualified separate line of business is a portion of the employer that is a line of business within the meaning of paragraph (b)(2)(ii) of this section, that is also a separate line of business within the meaning of paragraph (b)(2)(iii) of this section, and, finally, that satisfies the requirements of section 414(r)(2) in accordance with paragraph (b)(2)(iv) of this section.

(ii) *Line of business.* A line of business is a portion of an employer that is identified by the property or services it provides to customers of the employer.

For this purpose, the employer is permitted to determine the lines of business it operates by designating the property and services that each of its lines of business provides to customers of the employer. Rules for determining an employer's lines of business are provided in § 1.414(r)-2.

(iii) *Separate line of business.* A separate line of business is a line of business that is organized and operated separately from the remainder of the employer. The determination of whether a line of business is organized and operated separately from the remainder of the employer is made on the basis of objective criteria. These criteria generally require that the line of business be organized into one or more separate organizational units (e.g., corporations, partnerships, or divisions), that the line of business constitute one or more distinct profit centers within the employer, and that no more than a moderate overlap exist between the employee workforce and management employed by the line of business and those employed by the remainder of the employer. Rules for determining whether a line of business is organized and operated separately from the remainder of the employer and thus constitutes a separate line of business are provided in § 1.414(r)-3. These rules include an optional rule for vertically integrated lines of business.

(iv) *Qualified separate line of business*—(A) *In general.* A qualified separate line of business must satisfy the three statutory requirements in section 414(r)(2). A separate line of business that satisfies these three statutory requirements in accordance with paragraphs (b)(2)(iv)(B) through (b)(2)(iv)(D) of this section constitutes a qualified separate line of business.

(B) *Fifty-employee requirement.* Under section 414(r)(2)(A), a separate line of business must have at least 50 employees. Rules for determining whether this requirement is satisfied are provided in § 1.414(r)-4(b).

(C) *Notice requirement.* Under section 414(r)(2)(B), the employer must notify the Secretary that it treats itself as operating qualified separate lines of business under section 414(r) for purposes of applying the requirements of section 410(b), 401(a)(26), or 129(d)(8)

separately with respect to the employees of the separate line of business. Rules and procedures for complying with this requirement are provided in § 1.414(r)-4(c).

(D) *Requirement of administrative scrutiny.* Under section 414(r)(2)(C), a separate line of business must pass administrative scrutiny. A separate line of business may satisfy this requirement in one of two ways. First, a separate line of business that satisfies any of the safe harbors in § 1.414(r)-5 satisfies the requirement of administrative scrutiny. These safe harbors implement the statutory safe harbor of section 414(r)(3) as well as the guidelines prescribed under section 414(r)(2)(C). Second, a separate line of business that does not satisfy any of the safe harbors in § 1.414(r)-5 nonetheless satisfies the requirement of administrative scrutiny if the employer requests and receives an individual determination from the Commissioner that the separate line of business satisfies the requirement of administrative scrutiny. Rules and procedures applicable to requesting and receiving an individual determination are provided in § 1.414(r)-6. A separate line of business is permitted to satisfy the requirement of administrative scrutiny in any manner permitted under this paragraph (b)(2)(iv)(D), regardless of how any other separate line of business of the employer satisfies the requirement.

(3) *Determining the employees of a qualified separate line of business.* In order to apply certain provisions under these regulations, it is necessary to determine the employees of a qualified separate line of business. For these purposes, the employees of a qualified separate line of business consist of all employees who are substantial-service employees with respect to the qualified separate line of business, and all other employees who are assigned to the qualified separate line of business. Rules for making these determinations are provided in § 1.414(r)-7. These rules apply solely for the purposes specified in these regulations (see § 1.414(r)-7(a)(2) for a comprehensive listing of these purposes). These rules do not apply for any other purpose (e.g., the determination under § 1.414(r)-3 of

whether a line of business is organized and operated separately from the remainder of the employer).

(c) *Separate application of certain Code requirements to employees of a qualified separate line of business—(1) In general.* If an employer is treated as operating qualified separate lines of business under section 414(r) in accordance with paragraph (b) of this section, the requirements of sections 410(b), 401(a)(26), and 129(d)(8) may be applied separately with respect to the employees of each qualified separate line of business. Paragraphs (c)(2) through (c)(4) of this section provide for the separate application of these requirements. In general, the requirements of a Code section are applied separately with respect to the employees of a qualified separate line of business by treating those employees as if they were the only employees of the employer. Paragraph (c)(5) of this section prescribes the limited conditions under which other Code requirements may be applied separately with respect to the employees of a qualified separate line of business.

(2) *Separate application of section 410(b)—(i) General rule.* Except as provided in paragraph (c)(2)(ii) of this section, an employer is permitted to apply the requirements of section 410(b) separately with respect to the employees of each qualified separate line of business operated by the employer only if the employer does so with respect to all its plans, all its employees, and all its qualified separate lines of business. For this purpose, the requirements of section 410(b) encompass the requirements of section 401(a)(4) (including, but not limited to, the permitted disparity rules of section 401(l), the actual deferral percentage test of section 401(k)(3) and the actual contribution percentage test of section 401(m)(2)). Rules for applying section 410(b) separately with respect to the employees of a qualified separate line of business are provided in § 1.414(r)-8. An employer may apply the rules of section 414(r) for purposes of section 410(b) even if it does not apply the rules of section 414(r) for purposes of section 401(a)(26).

(ii) *Special rule for employer-wide plans.* Notwithstanding paragraph (c)(2)(i) of this section, an employer

that is treated as operating qualified separate lines of business for purposes of section 410(b) in accordance with paragraph (b) of this section may apply the requirements of section 410(b) on an employer-wide rather than a qualified-separate-line-of-business basis with respect to any plan (within the meaning of § 1.414(r)-8(d)(2), but without regard to the mandatory disaggregation rule of § 1.410(b)-7(c)(4) for portions of a plan that benefit employees of different qualified separate lines of business) that benefits a group of employees that satisfies the percentage test of section 410(b)(1)(A) (i.e., benefits at least 70 percent of the employer's nonexcludable nonhighly compensated employees). If section 401(a)(4) requires that a group of employees under the plan described in the preceding sentence satisfy section 410(b) for purposes of satisfying section 401(a)(4), the percentage test of section 410(b)(1)(A) must be satisfied by each such group of employees. See § 1.414(r)-8(c). The rules of this paragraph (c)(2)(ii) are illustrated by the following example.

Example. Employer A maintains a single profit-sharing plan, Plan W, and three pension plans, Plans X, Y and Z, each benefiting employees of a different one of Employer A's three qualified separate lines of business. Contributions to the profit-sharing plan are made pursuant to a cash or deferred arrangement in which all employees of Employer A are eligible to participate. Assume that, as a result, Plan W satisfies the requirements to be tested under this paragraph (c)(2)(ii). None of the pension plans benefits more than 70 percent of the nonexcludable nonhighly compensated employees of Employer A. Employer A is treated as operating qualified separate lines of business for purposes of applying section 410(b) to its qualified plans. The requirements of sections 410(b) and 401(a)(4) must therefore be applied to Plans X, Y and Z separately with respect to the employees of each of the three qualified separate line of business operated by Employer A. Since Plan W benefits at least 70 percent of the nonexcludable nonhighly compensated employees of Employer A, however, the requirements of sections 410(b) and 401(a)(4) (including section 401(k)) may be applied to Plan W on an employer-wide basis.

(3) *Separate application of section 401(a)(26)*—(i) *General rule.* Except as provided in paragraph (c)(3)(ii) of this section, an employer is permitted to

apply the requirements of section 401(a)(26) separately with respect to the employees of each qualified separate line of business operated by the employer only if the employer does so with respect to all its plans, all its employees, and all its qualified separate lines of business. Rules for applying the requirements of section 401(a)(26) separately with respect to the employees of a qualified separate line of business are provided in § 1.414(r)-9. An employer may apply the rules of section 414(r) for purposes of section 401(a)(26) even if it does not apply the rules of section 414(r) for purposes of section 410(b).

(ii) *Special rule for employer-wide plans.* Notwithstanding the first sentence of paragraph (c)(3)(i) of this section, an employer that is treated as operating qualified separate lines of business in accordance with paragraph (b) of this section for purposes of both sections 410(b) and 401(a)(26) may apply the requirements of section 401(a)(26) on an employer-wide rather than a qualified-separate-line-of-business basis with respect to any plan (within the meaning of § 1.414(r)-9(c)(2), but without regard to the mandatory disaggregation rule of § 1.401(a)(26)-2(d)(1)(iv) for portions of a plan that benefit employees of different qualified separate lines of business), but only if the special rule for employer-wide plans in paragraph (c)(2)(ii) of this section is applied to the same plan for the same plan year.

(4) *Separate application of section 129(d)(8).* [Reserved]

(5) *Separate application of other Code requirements.* Under no circumstance may the requirements of any section of the Code (other than a section described in paragraphs (c)(2) through (c)(4) of this section) be applied separately with respect to the employees of a qualified separate line of business unless the section specifically cross-references, or is specifically cross-referenced by, section 414(r). The Code sections whose requirements may not be applied separately with respect to the employees of a qualified separate line of business include, but are not limited to, sections 79(d)(3), 105(h), 117(d)(3), 120(c)(2), 125(g)(3), 127(b)(2), 129(d)(3), 132, 195, 401(a)(3) (as in effect

on September 1, 1974), 414(q)(4), 501(c)(17)(A)(ii), 501(c)(17)(B)(iii), 501(c)(18)(B), and 505(b)(1)(A).

(d) *Application of requirements*—(1) *In general.* The requirements of paragraphs (b) and (c) of this section must be applied in accordance with the rules in this paragraph (d).

(2) *Interpretation.* The provisions of this section and of §§1.414(r)-2 through 1.414(r)-11 are to be interpreted in a reasonable manner consistent with the purpose of section 414(r) to recognize an employer's operation of qualified separate lines of business for bona fide business reasons and not for reasons of evading the requirements of any section of the Code, including sections 410(b), 401(a)(26), and 129(d)(8). See section 414(r)(1) and (r)(7). Thus, for example, an employer is not permitted to apply these regulations in a manner that may literally comply with the other provisions of this section and of §§1.414(r)-2 through 1.414(r)-11, but that does not reflect the employer's operation of qualified separate lines of business for bona fide business reasons.

(3) *Separate operating units.* No additional requirements beyond those provided in these regulations apply to a separate operating unit. Thus, a separate operating unit that satisfies the requirements of paragraph (b)(2) of this section is deemed to satisfy the geographic separation requirement of section 414(r)(7) and accordingly is treated as a qualified separate line of business for all purposes under this section, including the separate application of section 401(a)(26).

(4) *Certain mergers and acquisitions.* A portion of an employer that is acquired in a transaction described in section 410(b)(6)(C) and §1.410(b)-2(f) (i.e., an asset or stock acquisition, merger, or other similar transaction involving a change in the employer of the employees of a trade or business) is deemed to satisfy the requirements to be a qualified separate line of business, other than the 50-employee requirement and the notice requirement of paragraphs (b)(2)(iv)(R) and (b)(2)(iv)(C) of this section, respectively. In addition, the acquired employees are not taken into account, and the property and services provided by the acquired portion to customers of the employer are dis-

regarded, for purposes of determining whether the employer's remaining lines of business satisfy the requirements of §§1.414(r)-3 through 1.414(r)-6. The rules in this paragraph (d)(4) apply only for those testing years with first testing days that fall within the transition period described in section 410(b)(6)(C). For this purpose, the transition period described in section 410(b)(6)(C) lasts only for so long as the conditions in that section are satisfied. For the definition of "first testing day," see §1.414(r)-11(b)(7). See §1.414(r)-5(d)(4), *Example 1*, for an example of the application of the rule in this paragraph (d)(4). See also §1.414(r)-5(d) for an administrative scrutiny safe harbor applicable to certain separate lines of business acquired in a transaction described in this section.

(5) *Governmental and tax-exempt employers*—(i) *General rule.* Except as provided in paragraph (d)(5)(ii) of this section, the rules of this section are applicable in determining whether section 401(a)(26) is satisfied by a plan maintained by an employer that is exempt from tax under Subtitle A of the Internal Revenue Code (including a governmental plan within the meaning of section 414(d)). Similarly, except as provided in paragraph (d)(5)(ii) of this section, the rules of this section are applicable in determining whether section 410(b) is satisfied by a plan that is subject to section 410(b) (including by virtue of §1.410(b)-2(e)) and is maintained by an employer that is exempt from tax under Subtitle A of the Internal Revenue Code (including a governmental plan within the meaning of section 414(d)).

(ii) *Additional rules.* [Reserved]

(6) *Testing year basis of application*—(i) *Section 414(r).* Whether an employer is treated as operating qualified separate lines of business under section 414(r) in accordance with paragraph (b) of this section is determined on a year-by-year basis with respect to the testing year. It is therefore possible for an employer to satisfy paragraph (b) of this section for one testing year and to fail to satisfy it for another testing year. It is also possible for an employer to satisfy paragraph (b) of this section for two testing years but to have designated its lines of business differently in each of

those two testing years. In determining whether an employer satisfies paragraph (b) of this section for a testing year, the requirements of that paragraph are applied solely with respect to the testing year. Thus, all property and services provided by the employer to its customers during the testing year must be provided exclusively by portions of the employer that for the testing year constitute qualified separate lines of business. Furthermore, each employee of the employer must respectively be treated as an employee of one and only one of those qualified separate lines of business for all purposes with respect to the testing year.

(ii) *Sections 410(b), 401(a)(26), and 129(d)(8).* For purposes of paragraph (c) of this section, relating to the separate application of sections 410(b), 401(a)(26), and 129(d)(8) to the employees of a qualified separate line of business, the determination whether an employer operates qualified separate lines of business in accordance with paragraph (b) of this section for a testing year generally applies for all plan years beginning in the testing year. Rules for the separate application of sections 410(b), 401(a)(26), and 129(d)(8) are respectively provided in §§ 1.414(r)-8, 1.414(r)-9, and 1.414(r)-10.

(7) *Averaging rules.* The employer is permitted to apply certain provisions of these regulations on the basis of a consecutive-year average (not to exceed five consecutive years) under the averaging rules of § 1.414(r)-11(c).

(8) *Definitions.* In applying the provisions of this section and of §§ 1.414(r)-2 through 1.414(r)-11, the definitions in §§ 1.414(r)-11(b) and 1.410(b)-9 govern, unless otherwise provided.

(9) *Effective—(i) General rule.* The provisions of this section and of §§ 1.414(r)-2 through 1.414(r)-11 apply to plan years and testing years beginning on or after January 1, 1994 (or January 1, 1996, in the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (non-elective plans)).

(ii) *Reasonable compliance—(A) In general.* With respect to plan years beginning before the date on which the Commissioner begins issuing determinations under section 414(r)(2)(C), and on

or after the first day of the first plan year to which section 414(r) applies under section 1112(a) of the Tax Reform Act of 1986, an employer is treated as operating qualified separate lines of business if the employer reasonably determines that it meets the requirements of section 414(r) (other than the requirement of administrative scrutiny under section 414(r)(2)(C)).

(B) *Determination of reasonable compliance.* Whether an employer reasonably determines that it meets the requirements of section 414(r) generally will be determined on the basis of all relevant facts and circumstances, including the extent to which the employer has resolved unclear issues in its favor. For the period described in paragraph (d)(9)(ii)(A) of this section, the Internal Revenue Service will consider the employer's compliance with the terms of these final regulations (other than the requirement of administrative scrutiny under paragraph (b)(2)(iv)(D) of this section) to constitute a reasonable determination that the employer meets the requirements of section 414(r) (other than the requirement of administrative scrutiny under section 414(r)(2)(C)).

(C) *Effect on other plans.* If an employer sponsors a plan that has a plan year beginning within the period described in paragraph (d)(9)(ii)(A) of this section, the employer's reasonable determination of its qualified separate lines of business for the testing year in which that plan year begins, and the allocation of employees to those qualified separate lines of business, must also be used for purposes of applying § 1.414(r)-8 and § 1.414(r)-9 for plan years that begin in that testing year but after the end of the period described in paragraph (d)(9)(ii)(A) of this section.

(e) *Additional rules.* The Commissioner may, in revenue rulings, notices, and other guidance of general applicability, provide any additional rules that may be necessary or appropriate in applying the qualified separate line of business requirements of section 414(r). These additional rules may include, for example, new safe harbors in § 1.414(r)-5.

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§ 1.414(r)-2 Line of business.

(a) *General rule.* A line of business is a portion of an employer that is identified by the property or services it provides to customers of the employer. For this purpose, an employer is permitted to determine its lines of business by designating the property or services that each of its lines of business provides to customers of the employer. Paragraph (b) of this section explains how an employer determines its lines of business for a testing year. Paragraph (c) of this section provides examples illustrating the application of this section.

(b) *Employer determination of its lines of business—(1) In general.* An employer determines its lines of business for a testing year first by identifying all the property and services it provides to its customers during the testing year, and then by designating which portion of the property and services is provided by each of its lines of business.

(2) *Property and services provided to customers—(i) In general.* Property, whether real or personal, tangible or intangible, is provided by an employer to a customer if the employer provides the property to or on behalf of the customer for consideration. Similarly, services are provided by an employer to a customer if the employer renders the services to or on behalf of the customer for consideration. An individual item of property or service is taken into account under this paragraph (b)(2) only if the employer provides the item to a person other than the employer in the ordinary course of a trade or business conducted by the employer and the person to whom the employer provides the item is acting in the capacity of a customer of the employer. A type of tangible property is deemed to be provided to customers of the employer for purposes of this section if, with respect to a business that produces or manufactures that type of tangible property, the employer satisfies the special rule in § 1.414(r)-3(d)(2)(iii)(B) for vertically integrated businesses.

(ii) *Timing of provision of property or services.* Generally an employer determines its lines of business on the basis of the property and services it provides to its customers for consideration during the testing year. However, it is not

necessary both that property or services actually be provided, and that consideration for the property or services actually be paid, during the current testing year. For an employer to be considered to provide property or services to customers for consideration during a testing year under this paragraph (b)(2), it is sufficient that the property or services actually be provided to customers during the testing year, the consideration actually be paid during the testing year, or the employer actually incur significant costs during the testing year associated with the provision of the property or services to a specified customer or specified customers.

(3) *Employer designation—(i) In general.* Once the employer has identified all the property and services it provides to its customers during the testing year under paragraph (b)(2) of this section, the employer determines its lines of business for the testing year by designating which portion of those property and services is provided by each of its lines of business. For this purpose, the employer must apportion all the property and services identified under paragraph (b)(2) of this section among its lines of business. An employer generally is not required to designate its lines of business for the testing year in the same manner as it designates its lines of business for any other testing year.

(ii) *Ability to combine unrelated types of property or services in a single line of business.* For purposes of this paragraph (b)(3), there is no requirement that a line of business provide only one type of property or service, or only related types of property or services. Nor is there any requirement that a line of business provide solely property or solely services. Thus, the employer is permitted to combine in a single line of business dissimilar types of property or services that are otherwise unrelated to one another.

(iii) *Ability to separate related types of property or services into two or more lines of business.* For purposes of this paragraph (b)(3), there is no requirement that all property or services of related types or the same type be provided by a single line of business. Thus, the employer is permitted to designate two or